



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Washington Horse Racing Commission

☒ **Permanent Rule**
☐ **Emergency Rule**

Effective date of rule:

Permanent Rules

☒ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

☐ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: To amend WAC 260-84-060 and WAC 260-84-065 to make changes to the penalty matrixes and penalties for human drug and alcohol violations.

Citation of existing rules affected by this order:

Repealed:
Amended: WAC 260-84-060, WAC 260-84-065
Suspended:

Statutory authority for adoption: RCW 67.16.020 and RCW 67.16.040

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 09-02-028 on December 30, 2008 (date).
Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: February 12, 2009

NAME (TYPE OR PRINT)

Robert J. Lopez

SIGNATURE

TITLE

Executive Secretary

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 13, 2009
TIME: 8:34 AM

WSR 09-05-066

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>2</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>2</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	<u>2</u>	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 08-05-086, filed 2/15/08, effective 3/17/08)

WAC 260-84-060 Penalty matrixes. (1) The imposition of reprimands, fines and suspensions will be based on the following penalty matrixes:

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$100	\$200	\$300
Unlicensed or improperly licensed personnel WAC 260-28-230, 260-36-150, and 260-28-295	\$100	\$200	\$300
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$75	\$100	\$200
Failure of jockey to report correct weight WAC 260-32-150	\$100	\$200	\$300
Failure of jockey to appear for films WAC 260-24-510	\$50	\$100	\$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Jockey easing mount without cause WAC 260-52-040	\$250 and/or suspension	\$500 and/or suspension	\$1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	Suspension (riding days) and possible fine		
((Jockey's)) Rider's misuse of whip WAC 260-52-040	Warning to \$2500		

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC ((260-40-140)) and WAC 260-80-030	(((\$250)) <u>\$200</u>	(((\$500)) <u>\$200 to \$300</u>	(((\$1000)) <u>\$200 to \$500</u>
((Unauthorized late scratch (WAC 260-40-010)	\$200	\$300	\$400))
Arriving late to the paddock or receiving barn WAC 260-28-200	Warning to \$50	\$50 to \$100	\$100 to \$200
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$50	<u>\$50 to \$100</u>	<u>\$100 to \$200</u>
((Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$200	\$300	\$400))
Failure to obtain permission for equipment changes WAC 260-44-010	\$50	\$100	\$200
Failure to report performance records WAC 260-40-100	Warning to \$50	\$100	\$150
Failure to submit gelding report WAC 260-28-295	\$100	\$200	\$300
((Insufficient workouts - resulting in scratch WAC 260-40-100	\$200	\$300	\$400))

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel WAC 260-28-230, <u>260-36-150</u> , and <u>260-28-295</u>	\$50	\$100	\$200
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Failure of <u>jockey agent</u> to honor riding engagements (call)(= agents) WAC 260-32-400	\$25	\$50	\$100
((Reporting incorrect)) <u>Failure of jockey to report correct weight</u> (= jockeys) WAC 260-32-150	\$25	\$50	\$100

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure of jockey to appear for films((--jockeys)) WAC 260-24-510	\$25	\$50	\$100
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Jockey easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding <u>with no disqualification (jockey at fault)</u> WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a <u>disqualification (jockey at fault)</u> WAC 260-52-040	<u>Suspension (riding days) and possible fine</u>		
((Jockey's)) Rider's misuse of whip WAC 260-52-040	Warning to \$2500		
Entering ineligible horse <u>or unauthorized late scratch</u> chapter 260-40 WAC ((260-40-140)) and WAC 260-80-030	\$100	<u>\$100 to \$200</u>	<u>\$200 to \$300</u>
((Unauthorized late scratch WAC 260-40-010	\$100	\$200	\$300))
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	\$100
Failure to deliver furosemide treatment form <u>to official veterinarian by appointed time</u> WAC 260-70-650	Warning to \$25	\$50	\$100
((Failure to have registration papers on file --resulting in a scratch WAC 260-40-090	\$50	\$100	\$100))
Failure to obtain permission for equipment change WAC 260-44-010	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>
Failure to report performance records WAC 260-40-100	<u>Warning to \$25</u>	<u>\$50</u>	<u>\$100</u>
Failure to submit gelding report WAC 260-28-295	\$50	\$100	\$200
((Failure to obtain permission for equipment changes WAC 260-44-010	\$25	\$50	\$100))

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$50	\$100	\$250 and/or suspension
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$200	\$500	\$1000 and/or suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$50	\$100	\$200
Failure to ((follow instructions of the outrider)) <u>ride in a safe or prudent manner</u> WAC ((260-24-690)) <u>260-80-145</u>	\$50	\$100	\$200
Use of improper, profane, or indecent language WAC 260-80-130	<u>Warning to \$200</u>	<u>\$200 to \$300</u>	<u>\$300 to \$500</u>
Failure to complete ((provisional)) <u>temporary</u> license application within fourteen days WAC 260-36-200	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Failure to register employees with the commission (trainers responsibility) WAC 260-28-230	Warning to \$50	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Nonparticipation - licensing WAC 260-36-080	License canceled		
False application WAC ((260-36-100 and 260-36-120)) <u>260-36-050</u>	\$50 to \$250 and/or possible denial, suspension or revocation of license		
Failure to divulge a misdemeanor or gross misdemeanor WAC ((260-36-120)) <u>260-36-050</u>	Warning to \$100		
Failure to divulge a felony WAC ((260-36-120)) <u>260-36-050</u>	\$100 to \$250 and/or denial, suspension, or revocation of license		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	\$500 fine and/or denial, suspension or revocation of license		
Failure to pay proper industrial insurance premium(s) ((chapter 260-220)) WAC <u>260-36-220</u> and ((WAC)) <u>260-36-230</u>	In addition to being required to pay the full industrial insurance premium, the trainer will be assessed a fine equal to fifty percent of the premium due		

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to pay L&I payment agreement ((WAC 260-28-235)) (per contract)	Immediate suspension until premium paid and \$50 fine for each quarter payment is late		
((Unlicensed person on the backside WAC 260-20-040))	Report violation to the racing association))		
Financial responsibility WAC 260-28-030	Resolution with mutual agreement between the parties - failure to comply with the agreement will result in immediate suspension		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine within 7 days of ruling conference (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	<u>Immediate ejection from the grounds</u> , 1 year suspension ((plus)), and mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	<u>Immediate ejection from the grounds</u> , 1 year suspension ((plus)), and mandatory referral to commission for revocation		
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	\$50	\$100	\$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and \$250 fine to trainer and plater	Horse scratched and \$500 fine to trainer and plater	Horse scratched and \$1000 fine to trainer and plater
Failure to display or possess license badge when in restricted area WAC 260-36-110	\$25	\$50	\$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee will include violations which occurred in Washington as well as any other recognized racing jurisdiction. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards have discretion to impose the penalties as provided in WAC 260-24-510 (3)(a). For violations considered minor, the fine can be up to \$500 and/or suspension for up to sixty days. Fines for violations considered major can be up to \$2,500 and/or suspension up to one year, or revocation.

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty will include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the

parimutuel industry;

(c) The danger to human and/or equine safety;

(d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or

(e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards will follow the penalty guidelines as set forth in WAC 260-84-090, 260-84-100, 260-84-110, 260-84-120, and 260-84-130.

(6) The executive secretary or stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a ~~((stewards'))~~ referral will not preclude commission action in any matter. ~~((A))~~ An executive secretary's or stewards' ruling will not prevent the commission from imposing a more severe penalty.

AMENDATORY SECTION (Amending WSR 07-03-066, filed 1/16/07, effective 2/16/07)

WAC 260-84-065 Licensees--Drug and alcohol penalties. (1) Engaging in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2).

(a) First offense - thirty-day suspension; and

(b) Second or subsequent offense - one-year suspension and referral to the commission for revocation.

(2) Possessing any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance, other than marijuana in violation of WAC 260-34-020(5); or possessing or having within their body while on the grounds of a licensed race meet any illegal controlled substance, in violation of WAC 260-34-020 (1) or (4).

(a) First offense - thirty-day suspension; and

(b) Second offense - one-year suspension and referral to the commission for revocation.

(3) Possessing any equipment, products or materials of any kind, which are used or intended for use in ingesting, inhaling or otherwise introducing into the human body marijuana, in violation of WAC 260-34-020(5); or possessing or having within their body marijuana, an illegal controlled substance, while on the grounds of any licensed race meet, in violation of WAC 260-34-020(1).

(a) First offense - three-day suspension;

(b) Second offense - thirty-day suspension; and

(c) Third or subsequent offenses - one-year suspension and referral to commission for revocation.

(4) Being under the influence of or affected by intoxicating liquor and/or drugs in violation of WAC 260-34-020(1), excluding persons on horseback.

(a) First offense - warning to one-day suspension;

(b) Second offense - three-day suspension;
(c) Third offense - thirty-day suspension; and
(d) Subsequent offenses - one-year suspension and referral to commission for revocation.

(5) Being under the influence of or affected by intoxicating liquor and/or drugs, and being on horseback in violation of WAC 260-34-020(1).

(a) First offense - warning to three-day suspension;

(b) Second offense - up to a thirty-day suspension; and

(c) Third offense - up to a one-year suspension and referral to commission for revocation.

(6) Refusing to submit to a drug or alcohol test, in violation of WAC 260-34-020(6) will result in a penalty of a one-year suspension plus referral to the commission for revocation.

~~((+6+))~~ (7) Possessing any equipment or material used to manufacture or distribute any controlled substance, or engaging in the sale, manufacturing or distribution of any illegal controlled substance or possessing an illegal controlled substance with intent to deliver on the grounds of any licensed race meet in violation of WAC 260-34-020 (3) or (5), immediate ejection from the grounds, a one-year suspension plus referral to the commission for revocation.

~~((+7+))~~ (8)(a) For violations of WAC 260-34-020 (1) and (4), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during the period of the stay a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to comply with the following conditions during the duration of the treatment program:

(i) Remain in compliance with the rehabilitation and/or treatment program.

(ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission security investigators.

(iii) Have no violations of chapter 260-34 WAC.

Upon completion of the rehabilitation or treatment program, the licensee or applicant must provide documentation of completion to the board of stewards. Upon making a determination that the licensee or applicant successfully completed the rehabilitation or treatment program, the board of stewards may direct that the final disposition of the violation will be that the licensee or applicant completed a treatment program in lieu of suspension.

(b) If the board of stewards, after a conference, finds that the licensee or applicant failed to comply with the conditions required in (a)(iii) of this subsection, the board of stewards has discretion to impose the original suspension authorized by this rule. If the failure to comply with the conditions of the stay is

a violation of chapter 260-34 WAC, the board of stewards may also hold a ruling conference for that rule violation and impose such penalty as is provided for that violation.

~~((+8+))~~ (9) Any licensee or applicant who tests positive (presumptive or confirmatory) for the presence of an illegal controlled substance is prohibited from performing any duties for which a license is required until the licensee does not test positive (presumptive or confirmatory) for the presence of any illegal controlled substance.

~~((+9+))~~ (10) Any licensee or applicant who is affected by intoxicating liquor or who has an alcohol concentration of 0.08 percent or higher is prohibited from performing any duties for which a license is required until the licensee is not affected by intoxicating liquor and his/her alcohol concentration is below 0.08 percent.

(11) Any licensee or applicant who has an alcohol concentration of 0.02 percent or higher while on horseback is prohibited from being on horseback until his/her alcohol concentration is below 0.02 percent.